

Dear Senators HEIDER, Souza, Jordan, and
Representatives WOOD, Packer, Chew:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of
the Board of Dentistry:

IDAPA 19.01.01 - Rules of the Idaho State Board of Dentistry - Proposed Rule (Docket No.
19-0101-1701);

IDAPA 19.01.01 - Rules of the Idaho State Board of Dentistry - Proposed Rule (Docket No.
19-0101-1702);

IDAPA 19.01.01 - Rules of the Idaho State Board of Dentistry - Proposed Rule (Docket No.
19-0101-1703).

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by the
cochairmen or by two (2) or more members of the subcommittee giving oral or written notice to Research
and Legislation no later than fourteen (14) days after receipt of the rules' analysis from Legislative
Services. The final date to call a meeting on the enclosed rules is no later than 09/29/2017. If a meeting is
called, the subcommittee must hold the meeting within forty-two (42) days of receipt of the rules' analysis
from Legislative Services. The final date to hold a meeting on the enclosed rules is 10/30/2017.

The germane joint subcommittee may request a statement of economic impact with respect to a
proposed rule by notifying Research and Legislation. There is no time limit on requesting this statement,
and it may be requested whether or not a meeting on the proposed rule is called or after a meeting has
been held.

To notify Research and Legislation, call 334-4834, or send a written request to the address on the
memorandum attached below.



Eric Milstead
Director

Legislative Services Office

Idaho State Legislature

Serving Idaho's Citizen Legislature

MEMORANDUM

TO: Rules Review Subcommittee of the Senate Health & Welfare Committee and the House Health & Welfare Committee

FROM: Senior Legislative Research Analyst - Elizabeth Bowen

DATE: September 12, 2017

SUBJECT: Board of Dentistry

IDAPA 19.01.01 - Rules of the Idaho State Board of Dentistry - Proposed Rule (Docket No. 19-0101-1701)

IDAPA 19.01.01 - Rules of the Idaho State Board of Dentistry - Proposed Rule (Docket No. 19-0101-1702)

IDAPA 19.01.01 - Rules of the Idaho State Board of Dentistry - Proposed Rule (Docket No. 19-0101-1703)

The Board of Dentistry submits notice of proposed rulemaking at IDAPA 19.01.01.

Docket No. 19-0101-1701

This proposed rule: (1) repeals language in the existing rule that incorporates a document by reference; and (2) sets forth requirements relating to training courses necessary to obtain a moderate sedation permit. Negotiated rulemaking was conducted, and there is no anticipated negative fiscal impact on the state general fund. The Board states that this rulemaking is authorized pursuant to Section 54-912, Idaho Code.

Docket No. 19-0101-1702

This proposed rule revises existing language relating to licensure examinations, dental assistants, and unprofessional conduct. The changes are being made for purposes of clarity. Negotiated rulemaking was conducted, and there is no anticipated negative fiscal impact on the state general fund. The Board states that this rulemaking is authorized pursuant to Section 54-912, Idaho Code.

Docket No. 19-0101-1703

This proposed rule enacts new language relating to telehealth services authorized by the Idaho Telehealth Access Act (Chapter 57, Title 54, Idaho Code). The new language permits licensed dentists or dental hygienists to provide telehealth services in compliance with the Act and pursuant to informed consent by the patient. Negotiated rulemaking was conducted, and there is no anticipated negative fiscal impact on the state general fund. The Board states that this rulemaking is authorized pursuant to Section 54-912, Idaho Code.

cc: Board of Dentistry
Susan Miller

Mike Nugent, Manager
Research & Legislation

Paul Headlee, Manager
Budget & Policy Analysis

April Renfro, Manager
Legislative Audits

Glenn Harris, Manager
Information Technology

IDAPA 19 – IDAHO STATE BOARD OF DENTISTRY
19.01.01 – RULES OF THE IDAHO STATE BOARD OF DENTISTRY
DOCKET NO. 19-0101-1701
NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section, 54-912 Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 20, 2017.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Rule 19.01.01.004 is being amended to delete the American Dental Association’s sedation-related documents as incorporated by reference. The rules regarding moderate sedation (19.01.01.060) are being amended by the addition of qualifying course requirements.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking:

This rulemaking is budget neutral and has no fiscal impact to the state general fund or the Board of Dentistry’s dedicated fund.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 5, 2017 Idaho Administrative Bulletin, [Volume 17-7, page 69](#). Comments were received and considered before initiating this proposed rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Susan Miller, Executive Director, (208) 334-2369.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 27, 2017.

DATED this 10th day of August, 2017.

Susan Miller, Executive Director
Idaho State Board of Dentistry
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THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 19-0101-1701
(Only Those Sections With Amendments Are Shown.)

004. INCORPORATION BY REFERENCE (RULE 4).

Pursuant to Section 67-5229, Idaho Code, this chapter incorporates by reference the following documents: (7-1-93)

01. Professional Standards. (3-29-12)

a. American Association of Oral and Maxillofacial Surgeons, Office Anesthesia Evaluation Manual, 8th Edition, 2012. (3-20-14)

~~**b.** American Dental Association, Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students, October 2007. (4-7-11)~~

~~**e.** American Dental Association, Guidelines for the Use of Sedation and General Anesthesia by Dentists, October 2007. (4-7-11)~~

~~**d.** American Dental Association Policy Statement: The Use of Sedation and General Anesthesia by Dentists, October 2007. (4-7-11)~~

eb. Centers for Disease Control and Prevention, DHHS, Guidelines for Infection Control in Dental Health-Care Settings, 2003. (4-6-05)

fc. American Dental Association, Principles of Ethics, Code of Professional Conduct and Advisory Opinions (ADA Code), January 2009. (4-7-11)

gd. American Dental Hygienists' Association, Code of Ethics for Dental Hygienists (ADHA Code), June 2009. (4-7-11)

he. American Dental Hygienists' Association, Standards for Clinical Dental Hygiene Practice, March 10, 2008. (4-7-11)

02. Availability. These documents are available for public review at the Idaho State Board of Dentistry, 350 North 9th Street, Suite M-100, Boise, Idaho 83720. (3-29-12)

(BREAK IN CONTINUITY OF SECTIONS)

060. MODERATE SEDATION (RULE 60).

Dentists licensed in the state of Idaho cannot administer moderate sedation in the practice of dentistry unless they have obtained the proper moderate sedation permit from the Idaho State Board of Dentistry. A moderate sedation permit may be either enteral or parenteral. A moderate enteral sedation permit authorizes dentists to administer moderate sedation by either enteral or combination inhalation-enteral routes of administration. A moderate parenteral sedation permit authorizes a dentist to administer moderate sedation by any route of administration. A dentist shall not administer moderate sedation to children under sixteen (16) years of age and one hundred (100) pounds unless they have qualified for and been issued a moderate parenteral sedation permit. (3-29-12)

01. Requirements for a Moderate Enteral Sedation Permit. To qualify for a moderate *enteral* sedation permit, a dentist applying for a permit shall provide proof that the dentist has completed training in the administration of moderate sedation to a level consistent with that prescribed *in the American Dental Association's "Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students," as incorporated in Section 004 in these rules* by the Board within the five (5) year period immediately prior to the date of application for a

moderate sedation permit. The five (5) year requirement regarding the required training for a moderate ~~enteral~~ sedation permit shall not be applicable to applicants who hold an equivalent permit in another state which has been in effect for the twelve (12) month period immediately prior to the application date. ~~To obtain a moderate enteral sedation permit, a dentist must provide verification of~~ Qualifying training courses must be sponsored by or affiliated with a dental school accredited by the Commission on Dental Accreditation of the American Dental Association or be approved by the Board of Dentistry. The training program shall include the following: (4-11-15)()

~~a. Completion of an American Dental Association accredited or Board of Dentistry approved post-doctoral training program within five (5) years of the date of application for a moderate enteral sedation permit that included documented training of a minimum of twenty-four (24) hours of instruction plus management of at least ten (10) adult case experiences by the enteral and/or enteral nitrous oxide/oxygen route. These ten (10) cases must include at least three live clinical dental experiences managed by participants in groups no larger than five (5). The remaining cases may include simulations and/or video presentations, but must include one experience in returning a patient from deep to moderate sedation; and~~ (4-7-11)

~~b. Current certification in Advanced Cardiac Life Support.~~ (4-11-15)

~~02. Requirements for a Moderate Parenteral Sedation Permit. To qualify for a moderate parenteral sedation permit, a dentist applying for a permit shall provide proof that the dentist has completed training in the administration of moderate parenteral sedation as prescribed in the American Dental Association's "Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students," as incorporated in Section 004 of these rules within the five (5) year period immediately prior to the date of application for a moderate parenteral sedation permit. The five (5) year requirement shall not be applicable to applicants who hold an equivalent permit in another state which has been in effect for the twelve (12) month period immediately prior to the date of application. The training program shall:~~ (4-7-11)

~~a. Be sponsored by or affiliated with a dental school accredited by the Commission on Dental Accreditation of the American Dental Association or a teaching hospital or facility approved by the Board of Dentistry; and~~ (4-5-00)

~~b. Consist of a minimum of sixty (60) hours of instruction, plus management of at least twenty (20) patients by the intravenous route; and~~ (4-7-11)

~~c. Include the issuance of a certificate of successful completion that indicates the type, number of hours, and length of training received.~~ (3-18-99)

~~d. In addition, the dentist must maintain current certification in Advanced Cardiac Life Support or Pediatric Advanced Life Support, whichever is appropriate for the patient being sedated.~~ (3-29-17)

a. Course objectives: ()

i. List and discuss the advantages and disadvantages of moderate sedation; ()

ii. Discuss prevention, recognition and management of complications associated with moderate sedation; ()

iii. Administer moderate sedation to patients in a clinical setting in a safe and effective manner; ()

iv. Discuss the abuse potential, occupational hazards and other untoward effects of the agents utilized to achieve moderate sedation; ()

v. Describe and demonstrate the technique of intravenous access, intramuscular injection and other parenteral techniques; ()

vi. Discuss the pharmacology of the drug(s) selected for administration; ()

vii. Discuss the precautions, indications, contraindications and adverse reactions associated with the

- drug(s) selected: ()
- vii. Administer the selected drug(s) to dental patients in a clinical setting in a safe and effective manner: ()
- ix. List the complications associated with techniques of moderate sedation; ()
- x. Describe a protocol for management of emergencies in the dental office and list and discuss the emergency drugs and equipment required for the prevention and management of emergency situations; ()
- xi. Discuss principles of advanced cardiac life support or an appropriate dental sedation/anesthesia emergency course equivalent; ()
- xii. Demonstrate the ability to manage emergency situations; and ()
- xiii. Demonstrate the ability to diagnose and treat emergencies related to the next deeper level of anesthesia than intended. ()
- c. Course Content:** ()
- i. Historical, philosophical and psychological aspects of anxiety and pain control; ()
- ii. Patient evaluation and selection through review of medical history taking, physical diagnosis and psychological considerations; ()
- iii. Use of patient history and examination for ASA classification, risk assessment and pre-procedure fasting instructions; ()
- iv. Definitions and descriptions of physiological and psychological aspects of anxiety and pain; ()
- v. Description of the sedation anesthesia continuum, with special emphasis on the distinction between the conscious and the unconscious state; ()
- vi. Review of pediatric and adult respiratory and circulatory physiology and related anatomy; ()
- vii. Pharmacology of local anesthetics and agents used in moderate sedation, including drug interactions and contraindications; ()
- viii. Indications and contraindications for use of moderate sedation; ()
- ix. Review of dental procedures possible under moderate sedation; ()
- x. Patient monitoring using observation and monitoring equipment, with particular attention to vital signs and reflexes related to consciousness; ()
- xi. Maintaining proper records with accurate chart entries recording medical history, physical examination, informed consent, time-oriented anesthesia record, including the names of all drugs administered including local anesthetics, doses, and monitored physiological parameters; ()
- xii. Prevention, recognition and management of complications and emergencies; ()
- xiii. Description and use of moderate sedation monitors and equipment; ()
- xiv. Discussion of abuse potential; ()
- xv. Intravenous access: anatomy, equipment and technique; ()

xvi. Prevention, recognition and management of complications of venipuncture and other parenteral techniques; ()

xvii. Description and rationale for the technique to be employed; and ()

xviii. Prevention, recognition and management of systemic complications of moderate sedation, with particular attention to airway maintenance and support of the respiratory and cardiovascular systems. ()

d. Hours of instruction: ()

i. For a moderate enteral sedation permit, the applicant must provide proof of training with a minimum of twenty-four (24) hours of instruction plus management of at least ten (10) adult case experiences by the enteral and/or enteral-nitrous oxide/oxygen route. These ten (10) cases must include at least three live clinical dental experiences managed by participants in groups no larger than five (5). The remaining cases may include simulations and/or video presentations, but must include one experience in returning a patient from deep to moderate sedation. ()

ii. For a moderate parenteral sedation permit, the applicant must provide proof of training with a minimum of sixty (60) hours of instruction, plus management of at least twenty (20) patients by the intravenous route. ()

03. General Requirements for Moderate Enteral and Moderate Parenteral Sedation Permits. The qualified dentist is responsible for the sedative management, adequacy of the facility and staff, diagnosis and treatment of emergencies related to the administration of moderate sedation and providing the equipment, drugs and protocol for patient rescue. Evaluators appointed by the Idaho State Board of Dentistry will periodically assess the adequacy of the facility and competence of the anesthesia team. *The Board adopts the standards incorporated by reference in Section 004.01.e. and Section 004.01.d. of these rules as set forth by the American Dental Association.* (4-11-15)()

a. Facility, Equipment and Drug Requirements. The following facilities, equipment and drugs shall be available for immediate use during the sedation and recovery phase: (4-11-15)

i. An operating room large enough to adequately accommodate the patient on an operating table or in an operating chair and to allow an operating team of at least two (2) individuals to freely move about the patient; (4-11-15)

ii. An operating table or chair that permits the patient to be positioned so the operating team can maintain the patient's airway, quickly alter the patient's position in an emergency, and provide a firm platform for the administration of basic life support; (4-11-15)

iii. A lighting system that permits evaluation of the patient's skin and mucosal color and a backup lighting system of sufficient intensity to permit completion of any operation underway in the event of a general power failure; (4-11-15)

iv. Suction equipment that permits aspiration of the oral and pharyngeal cavities and a backup suction device which will function in the event of a general power failure; (4-11-15)

v. An oxygen delivery system with adequate full face mask and appropriate connectors that is capable of delivering high flow oxygen to the patient under positive pressure, together with an adequate backup system; (4-11-15)

vi. A recovery area that has available oxygen, adequate lighting, suction and electrical outlets. The recovery area can be the operating room; (4-11-15)

vii. A sphygmomanometer, pulse oximeter, oral and nasopharyngeal airways, supraglottic airway devices, and automated external defibrillator (AED); and (4-11-15)

- viii. Emergency drugs including, but not limited to, pharmacologic antagonists appropriate to the drugs used, bronchodilators, and antihistamines. (4-11-15)
- ix. Additional emergency equipment and drugs required for moderate parenteral sedation permits include precordial/pretracheal stethoscope or end-tidal carbon dioxide monitor, intravenous fluid administration equipment, vasopressors, and anticonvulsants. (3-29-17)
- b.** Personnel. For moderate sedation, the minimum number of personnel shall be two (2) including: (4-7-11)
- i. The operator; and (10-1-87)
- ii. An assistant currently certified in Basic Life Support for Healthcare Providers. (4-7-11)
- iii. Auxiliary personnel must have documented training in basic life support for healthcare providers, shall have specific assignments, and shall have current knowledge of the emergency cart inventory. The dentist and all office personnel must participate in documented periodic reviews of office emergency protocol, including simulated exercises, to assure proper equipment function and staff interaction. (4-11-15)
- c.** Pre-sedation Requirements. Before inducing moderate sedation, a dentist shall: (4-11-15)
- i. Evaluate the patient's medical history and document, using the American Society of Anesthesiologists Patient Physical Status Classifications, that the patient is an appropriate candidate for moderate sedation; (4-11-15)
- ii. Give written preoperative and postoperative instructions to the patient or, when appropriate due to age or psychological status of the patient, the patient's guardian; (4-11-15)
- iii. Obtain written informed consent from the patient or patient's guardian for the sedation; and (4-11-15)
- iv. Maintain an anesthesia record, and enter the individual patient's sedation into a case/drug log. (4-11-15)
- d.** Patient Monitoring. Patients shall be monitored as follows: (4-11-15)
- i. Patients must be continuously monitored using pulse oximetry. The patient's blood pressure, heart rate, and respiration shall be recorded every five (5) minutes during the sedation and then continued every fifteen (15) minutes until the patient meets the requirements for discharge. These recordings shall be documented in the patient record. The record must also include documentation of preoperative and postoperative vital signs, all medications administered with dosages, time intervals and route of administration. If this information cannot be obtained, the reasons shall be documented in the patient's record. A patient under moderate sedation shall be continuously monitored; (3-29-17)
- ii. During the recovery phase, the patient must be monitored by an individual trained to monitor patients recovering from moderate sedation; (4-11-15)
- iii. A dentist shall not release a patient who has undergone moderate sedation except to the care of a responsible third party; (4-11-15)
- iv. The dentist shall assess the patient's responsiveness using preoperative values as normal guidelines and discharge the patient only when the following criteria are met: vital signs are stable, patient is alert and oriented, and the patient can ambulate with minimal assistance; and (4-11-15)
- v. A discharge entry shall be made by the dentist in the patient's record indicating the patient's condition upon discharge and the name of the responsible party to whom the patient was discharged. (4-11-15)

e. Sedation of Other Patients. The permit holder shall not initiate sedation on another patient until the previous patient is in a stable monitored condition and in the recovery phase following discontinuation of their sedation. (4-11-15)

f. Permit Renewal. Before the expiration date of a permit, the Board will, as a courtesy, mail notice for renewal of permit to the last mailing address on file in the Board's records. The licensee must return the completed renewal application along with the current renewal fees prior to the expiration of said permit. Failure to submit a renewal application and permit fee shall result in expiration of the permit and termination of the licensee's right to administer moderate sedation. Failure to submit a complete renewal application and permit fee within thirty (30) days of expiration of the permit shall result in cancellation of the permit. A licensee whose permit is canceled due to failure to renew within the prescribed time is subject to the provisions of Paragraph 060.03.g. of these rules. Renewal of the permit will be required every five (5) years. Proof of a minimum of twenty-five (25) credit hours continuing education in moderate sedation which may include training in medical/office emergencies will be required to renew a permit. A fee shall be assessed to cover administrative costs. In addition to the continuing education hours, a dentist must: (3-29-17)

i. For a moderate enteral sedation permit, maintain current certification in basic life support for healthcare providers or advanced cardiac life support; (4-11-15)

ii. For a moderate parenteral sedation permit, maintain current certification in advanced cardiac life support. (3-20-14)

g. Reinstatement. A dentist may make application for the reinstatement of a canceled or surrendered permit issued by the Board under this rule within five (5) years of the date of the permit's cancellation or surrender. Applicants for reinstatement of a permit shall satisfy the facility and personnel requirements of this rule and shall be required to verify that they have obtained an average of five (5) credit hours of continuing education in moderate sedation for each year subsequent to the date upon which the permit was canceled or surrendered. A fee for reinstatement shall be assessed to cover administrative costs. (3-29-17)

IDAPA 19 – IDAHO STATE BOARD OF DENTISTRY
19.01.01 – RULES OF THE IDAHO STATE BOARD OF DENTISTRY
DOCKET NO. 19-0101-1702
NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 54-912, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 20, 2017.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The examination rules will be amended to distinguish between written and clinical examination results and to clarify the clinical examination requirements. The dental assistant rule regarding authorization to place a rubber dam will be revised to reflect current nomenclature. The unprofessional conduct rule regarding prescription drugs will be revised for clarification.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking:

This rulemaking is budget neutral and has no fiscal impact to the state general fund or the Board of Dentistry's dedicated fund.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 5, 2017 Idaho Administrative Bulletin, [Volume 17-7, page 70](#). Comments were received and considered before initiating this proposed rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Susan Miller, Executive Director, (208) 334-2369.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 27, 2017.

DATED this 10th day of August, 2017.

Susan Miller, Executive Director
Idaho State Board of Dentistry
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Boise, ID 83720-0021
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THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 19-0101-1702
(Only Those Sections With Amendments Are Shown.)

010. EXAMINATIONS (RULE 10).

Examinations may be completed solely by the Board or, at its discretion, the Board may participate in and accept an examining agent. **Clinical Examination** results will be valid for Idaho licensure by examination for a period of five (5) years from the date of successful completion of the examination. ~~(3-29-17)~~()

(BREAK IN CONTINUITY OF SECTIONS)

014. EXAMINATION FOR GENERAL DENTAL LICENSES (RULE 14).

Pursuant to Section 54-918, Idaho Code, the Board shall conduct both written and clinical examinations of such duration and character and upon such subjects in dentistry as the Board shall determine to thoroughly test the fitness and ability of the applicant to practice dentistry in the state of Idaho. The Board may accept as meeting this requirement successful completion of an examination administered by the Board or its agent, and completion of supplementary examinations as the Board deems necessary to determine the competency of the applicant for licensure. Any exam conducted by the Board may include: (7-1-93)

01. Written Examination. Evidence of passing the National Board examination may be required of all candidates applying for a license to practice dentistry. Any other written examination will be specified by the Board. (7-1-93)

02. Clinical Examination. All applicants for license to practice general dentistry shall be required to pass a Board-approved clinical examination, ~~which includes a periodontal examination.~~ ~~(3-29-17)~~()

(BREAK IN CONTINUITY OF SECTIONS)

035. DENTAL ASSISTANTS - PRACTICE (RULE 35).

01. Direct Supervision. A dental assistant may perform specified activities under direct supervision as follows: (4-6-05)

- a.** Recording the oral cavity (existing restorations, missing and decayed teeth); (4-6-05)
- b.** Placement of topical anesthetic agents (prior to administration of a local anesthetic by a dentist or dental hygienist); (4-6-05)
- c.** Removal of excess bonding material from temporary and permanent restorations and orthodontic appliances (using hand instruments or contra-angle handpieces with disks or polishing wheels only); (4-6-05)
- d.** Expose and process radiographs; (4-6-05)
- e.** Make impressions for preparation of diagnostic models, bleach trays, fabrication of night guards, temporary appliances, temporary crowns or bridges; (3-20-14)
- f.** Record diagnostic bite registration; (4-6-05)
- g.** Record bite registration for fabrication of restorations; (4-6-05)

- h. Provide patient education and instruction in oral hygiene and preventive services; (4-6-05)
 - i. Placement of cotton pellets and temporary restorative materials into endodontic access openings; (4-6-05)
 - j. Placement and removal of arch wire; (4-6-05)
 - k. Placement and removal of orthodontic separators; (4-6-05)
 - l. Placement and removal of ligature ties; (4-6-05)
 - m. Cutting arch wires; (4-6-05)
 - n. Removal of loose orthodontic brackets and bands to provide palliative treatment; (4-6-05)
 - o. Adjust arch wires; (4-6-05)
 - p. Etching of teeth prior to placement of restorative materials; (4-6-05)
 - q. Etching of enamel prior to placement of orthodontic brackets or appliances by a Dentist; (4-6-05)
 - r. Placement and removal of ~~rubber~~ dental dam; (~~4-6-05~~)()
 - s. Placement and removal of matrices; (4-6-05)
 - t. Placement and removal of periodontal pack; (4-6-05)
 - u. Removal of sutures; (4-6-05)
 - v. Application of cavity liners and bases; (4-6-05)
 - w. Placement and removal of gingival retraction cord; and (3-20-14)
 - x. Application of topical fluoride agents. (3-20-14)
- 02. Prohibited Duties.** Subject to other applicable provisions of these rules and of the Act, dental assistants are hereby prohibited from performing any of the activities specified below: (7-1-93)
- a. Definitive diagnosis and treatment planning. (4-6-05)
 - b. The intraoral placement or carving of permanent restorative materials. (3-20-14)
 - c. Any irreversible procedure using lasers. (3-20-14)
 - d. The administration of any general or local injectable anesthetic. (3-20-14)
 - e. Any oral prophylaxis (removal of stains and plaque biofilm and if present, supragingival and/or subgingival calculus). (3-20-14)
 - f. Use of an air polisher. (3-20-14)
 - g. Any intra-oral procedure using a high-speed handpiece, except to the extent authorized by a Certificate of Registration or certificate or diploma of course completion issued by an approved teaching entity. (4-6-05)
 - h. The following expanded functions, unless authorized by a Certificate of Registration or certificate or diploma of course completion issued by an approved teaching entity and performed under direct supervision: (4-6-05)

- i. Fabrication and placement of temporary crowns; (4-6-05)
- ii. Perform the mechanical polishing of restorations; (7-1-93)
- iii. Initiating, regulating and monitoring the administration of nitrous oxide/oxygen to a patient; (4-7-11)
- iv. Application of pit and fissure sealants; (7-1-93)
- v. Coronal polishing (removal of plaque biofilm and stains from the teeth using an abrasive agent with a rubber cup or brush). (3-20-14)
- vi. Use of a high-speed handpiece only for the removal of orthodontic cement or resin. (3-20-14)

03. Expanded Functions Qualifications. A dental assistant may be considered Board qualified in expanded functions, authorizing the assistant to perform any or all of the expanded functions described in Subsection 035.02.h. upon satisfactory completion of the following requirements: (3-29-17)

a. Completion of Board-approved training in each of the expanded functions with verification of completion of the training to be provided to the Board upon request by means of a Certificate of Registration or other certificate evidencing completion of approved training. The required training shall include adequate training in the fundamentals of dental assisting, which may be evidenced by: (4-6-05)

- i. Current certification by the Dental Assisting National Board; or (7-1-93)
- ii. Successful completion of Board-approved curriculum in the fundamentals of dental assisting; or (3-29-12)
- iii. Successfully challenging the fundamentals course. (7-1-93)

b. Successful completion of a Board-approved competency examination in each of the expanded functions. There are no challenges for expanded functions. (3-18-99)

04. Curriculum Approval. Any school, college, institution, university or other teaching entity may apply to the Board to obtain approval of its course curriculum. Before approving such curriculum, the Board may require satisfactory evidence of the content of the instruction, hours of instruction, content of examinations or faculty credentials. (3-29-17)

05. Other Credentials. Assistants, who have completed courses or study programs in expanded functions that have not been previously approved by the Board, may submit evidence of the extent and nature of the training completed, and, if in the opinion of the Board the same is at least equivalent to other Board-approved curriculum, and demonstrates the applicant's fitness and ability to perform the expanded functions, the Board may consider the assistant qualified to perform any expanded function(s). (3-29-12)

(BREAK IN CONTINUITY OF SECTIONS)

040. UNPROFESSIONAL CONDUCT (RULE 40).

A dentist or dental hygienist shall not engage in unprofessional conduct in the course of his practice. Unprofessional conduct by a person licensed under the provisions of Title 54, Chapter 9, Idaho Code, is defined as, but not limited to, one (1) of the following: (3-20-14)

01. Fraud. Obtaining fees by fraud or misrepresentation, or over-treatment either directly or through an insurance carrier. (7-1-93)

- 02. Unlicensed Practice.** Employing directly or indirectly any suspended or unlicensed dentist or dental hygienist to practice dentistry or dental hygiene as defined in Title 54, Chapter 9, Idaho Code. (7-1-93)
- 03. Unlawful Practice.** Aiding or abetting licensed persons to practice dental hygiene or dentistry unlawfully. (7-1-93)
- 04. Dividing Fees.** A dentist shall not divide a fee for dental services with another party, who is not a partner or associate with him in the practice of dentistry, unless: (7-1-93)
- a.** The patient consents to employment of the other party after a full disclosure that a division of fees will be made; (7-1-93)
- b.** The division is made in proportion to the services performed and responsibility assumed by each dentist or party. (7-1-93)
- 05. Prescription Drugs.** Prescribing or administering prescription drugs not reasonably necessary for, or within the scope of, providing dental services for a patient. ~~In prescribing or administering prescription drugs, a dentist shall exercise reasonable and ordinary care and diligence and exert his best judgment in the treatment of his patient as dentists in good standing in the state of Idaho, in the same general line of practice, ordinarily exercised in like cases.~~ A dentist may not prescribe ~~prescription drugs for~~ or administer ~~controlled substances~~ **prescription drugs** to himself. A dentist shall not use controlled substances as an inducement to secure or maintain dental patronage or aid in the maintenance of any person's drug addiction by selling, giving or prescribing prescription drugs. ~~(3-29-17)()~~
- 06. Harassment.** The use of threats or harassment to delay or obstruct any person in providing evidence in any possible or actual disciplinary action, or other legal action; or the discharge of an employee primarily based on the employee's attempt to comply with the provisions of Title 54, Chapter 9, Idaho Code, or the Board's Rules, or to aid in such compliance. (7-1-93)
- 07. Discipline in Other States.** Conduct himself in such manner as results in a suspension, revocation or other disciplinary proceedings with respect to his license in another state. (3-18-99)
- 08. Altering Records.** Alter a patient's record with intent to deceive. (7-1-93)
- 09. Office Conditions.** Unsanitary or unsafe office conditions, as determined by the customary practice and standards of the dental profession in the state of Idaho and current recommendations of the American Dental Association and the Centers for Disease Control as referred to in Section 004. (7-1-93)
- 10. Abandonment of Patients.** Abandonment of patients by licensees before the completion of a phase of treatment, as such phase of treatment is contemplated by the customary practice and standards of the dental profession in the state of Idaho, without first advising the patient of such abandonment and of further treatment that is necessary. (7-1-93)
- 11. Use of Intoxicants.** Practicing dentistry or dental hygiene while under the influence of an intoxicant or controlled substance where the same impairs the dentist's or hygienist's ability to practice dentistry or hygiene with reasonable and ordinary care. (7-1-93)
- 12. Mental or Physical Illness.** Continued practice of dentistry or dental hygiene in the case of inability of the licensee to practice with reasonable and ordinary care by reason of one (1) or more of the following: (7-1-93)
- a.** Mental illness; (7-1-93)
- b.** Physical illness, including but not limited to, deterioration through the aging process, or loss of motor skill. (7-1-93)

13. **Consent.** Revealing personally identifiable facts, data or information obtained in a professional capacity without prior consent of the patient, except as authorized or required by law. (3-18-99)
14. **Scope of Practice.** Practicing or offering to practice beyond the scope permitted by law, or accepting and performing professional responsibilities that the licensee knows or has reason to know that he or she is not competent to perform. (3-18-99)
15. **Delegating Duties.** Delegating professional responsibilities to a person when the licensee delegating such responsibilities knows, or with the exercise of reasonable care and control should know, that such a person is not qualified by training or by licensure to perform them. (3-18-99)
16. **Unauthorized Treatment.** Performing professional services that have not been authorized by the patient or his legal representative. (3-18-99)
17. **Supervision.** Failing to exercise appropriate supervision over persons who are authorized to practice only under the supervision of a licensed professional. (7-1-93)
18. **Legal Compliance.** Failure to comply with any provisions of federal, state or local laws, statutes, rules, and regulations governing or affecting the practice of dentistry or dental hygiene. (3-29-12)
19. **Exploiting Patients.** Exercising undue influence on a patient in such manner as to exploit a patient for the financial or personal gain of a practitioner or of a third party. (7-1-93)
20. **Misrepresentation.** Willful misrepresentation of the benefits or effectiveness of dental services. (7-1-93)
21. **Disclosure.** Failure to advise patients or their representatives in understandable terms of the treatment to be rendered, alternatives, and disclosure of reasonably anticipated fees relative to the treatment proposed. (3-18-99)
22. **Sexual Misconduct.** Making suggestive, sexual or improper advances toward a patient or committing any lewd or lascivious act upon or with a patient. (7-1-93)
23. **Patient Management.** Use of unreasonable and/or damaging force to manage patients, including but not limited to hitting, slapping or physical restraints. (7-1-93)
24. **Compliance With Dentist Professional Standards.** Failure by a dentist to comply with professional standards applicable to the practice of dentistry, as incorporated by reference in this chapter. (3-29-12)
25. **Compliance With Dental Hygienist Professional Standards.** Failure by a dental hygienist to comply with professional standards applicable to the practice of dental hygiene, as incorporated by reference in this chapter. (3-29-12)
26. **Failure to Provide Records to a Patient or Patient's Legal Guardian.** Refusal or failure to provide a patient or patient's legal guardian legible copies of dental records. Failure to provide a patient or patient's legal guardian with records under Subsection 040.26 within five (5) business days shall be considered unprofessional conduct. A patient or patient's legal guardian may not be denied a copy of his records for any reason, regardless of whether the person has paid for the dental services rendered. A person may be charged for the actual cost of providing the records but in no circumstances may a person be charged an additional processing or handling fee or any charge in addition to the actual cost. (3-20-14)
27. **Failure to Cooperate With Authorities.** Failure to cooperate with authorities in the investigation of any alleged misconduct or interfering with a Board investigation by willful misrepresentation of facts, willful failure to provide information upon request of the Board, or the use of threats or harassment against any patient or witness to prevent them from providing evidence. (3-20-14)
28. **Advertising.** Advertise in a way that is false, deceptive, misleading or not readily subject to verification. (3-29-17)

IDAPA 19 – IDAHO STATE BOARD OF DENTISTRY
19.01.01 – RULES OF THE IDAHO STATE BOARD OF DENTISTRY
DOCKET NO. 19-0101-1703
NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 54-912, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 20, 2017.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

A new section (19.01.01.066) will be added to further define parameters for teledental services authorized under the Idaho Telehealth Access Act.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking:

This rulemaking is budget neutral and has no fiscal impact to the state general fund or the Board of Dentistry's dedicated fund.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 5, 2017 Idaho Administrative Bulletin, [Volume 17-7, page 71](#). Comments were received and considered before initiating this proposed rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Susan Miller, Executive Director, (208) 334-2369.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 27, 2017.

DATED this 10th day of August, 2017.

Susan Miller, Executive Director
Idaho State Board of Dentistry
350 N. 9th Street, Suite M100
Boise, ID 83702
P.O. Box 83720
Boise, ID 83720-0021
Phone: (208) 334-2369
Fax: (208) 334-3247
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THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 19-0101-1703
(Only Those Sections With Amendments Are Shown.)

028. VOLUNTEER DENTAL HYGIENE SERVICES (RULE 28).

A person holding an unrestricted active status dental hygienist's license issued by the Board may provide dental hygiene services in an extended access oral health care *program setting* without being issued an extended access dental hygiene license endorsement under the following circumstances: (3-30-07)()

01. Extended Access Oral Health Care *Program Setting*. The dental hygiene services must be performed in an extended access oral health care *program setting* under the supervision of a dentist *who is employed, retained by, or is a volunteer for the program who has issued written orders to the dental hygienist*; (3-20-14)()

02. Dental Hygiene Services Performed. The dental hygiene services performed shall be limited to oral health screening and patient assessment, preventive and oral health education, preparation and review of health history, non-surgical periodontal treatment, oral prophylaxis, the application of caries preventive agents including fluoride, the application of pit and fissure sealants with recommendation that the patient will be examined by a dentist; (3-20-14)

03. Volunteers. The dental hygienist must perform the dental hygiene services on a volunteer basis and shall not accept any form of remuneration for providing the services; and (3-30-07)

04. Volunteer Time Limit. The dental hygienist may not provide dental hygiene services under this provision for more than five (5) days within any calendar month. (3-30-07)

029. DENTAL HYGIENISTS - LICENSE ENDORSEMENTS (RULE 29).

Subject to the provisions of the Dental Practice Act, Chapter 9, Title 54, Idaho Code, and these rules, the Board may grant license endorsements to qualified dental hygienists as follows: (4-6-05)

01. Extended Access Dental Hygiene Endorsement. Upon application, the Board may grant an extended access dental hygiene endorsement to a person holding an unrestricted active status dental hygienist's license issued by the Board who provides satisfactory proof that all of the following requirements are met: (3-20-14)

a. The person has been licensed as a dental hygienist during the two (2) year period immediately prior to the date of application for an extended access dental hygiene endorsement; (4-6-05)

b. For a minimum of one thousand (1000) total hours within the previous two (2) years, the person has either been employed as a dental hygienist in supervised clinical practice or has been engaged as a clinical practice educator in an approved dental hygiene school; (4-6-05)

c. The person has not been disciplined by the Board or another licensing authority upon grounds that bear a demonstrable relationship to the ability of the dental hygienist to safely and competently practice under general supervision in an extended access oral health care *program setting*; and (3-20-14)()

d. Any person holding an unrestricted active status dental hygienist's license issued by the Board who is employed as a dental hygienist in an extended access oral health care *program setting* in this state shall be granted an extended access dental hygiene endorsement without being required to satisfy the experience requirements specified in this rule. (3-30-07)()

02. Extended Access Dental Hygiene Restorative Endorsement. Notwithstanding any other provision of these rules, a qualified dental hygienist holding an extended access dental hygiene restorative endorsement may perform specified restorative functions under the direct supervision of a dentist in an extended access oral health care *program setting*. Permissible restorative functions under this endorsement shall be limited to

the placement of a restoration into a tooth prepared by a dentist and the carving, contouring and adjustment of the contacts and occlusion of the restoration. Upon application, the Board may grant an extended access dental hygiene restorative endorsement to a person holding an unrestricted active status dental hygienist's license issued by the Board who provides satisfactory proof that the following requirements are met: (3-30-07)()

a. The person has successfully completed the Western Regional Examining Board's restorative examination or an equivalent restorative examination approved by the Board; or (3-30-07)

b. The person holds an equivalent restorative permit in another state as of the date of endorsement application which required successful completion of the Western Regional Examining Board's restorative examination or an equivalent restorative examination approved by the Board for its issuance; and (3-30-07)

c. The person has not been disciplined by the Board or another licensing authority upon grounds that bear a demonstrable relationship to the ability of the dental hygienist to safely and competently practice under in an extended access oral health care ~~program~~ setting. (3-30-07)()

03. **Renewal.** Upon payment of the appropriate license fee and completion of required continuing education credits specified for a dental hygiene license endorsement, a person meeting all other requirements for renewal of a license to practice dental hygiene shall also be entitled to renewal of a dental hygiene license endorsement for the effective period of the license. An endorsement shall immediately expire and be cancelled at such time as a person no longer holds an unrestricted active status dental hygienist's license issued by the Board or upon a person's failure to complete the required continuing education credits. (3-30-07)

(BREAK IN CONTINUITY OF SECTIONS)

066. TELEHEALTH SERVICES (RULE 66).

Definitions applicable to these rules are those definitions set forth in the Idaho Telehealth Access Act and in Section 54-5703, Idaho Code. ()

01. **Licensure and Location.** Any dentist or dental hygienist who provides any telehealth services to patients located in Idaho must hold an active Idaho license issued by the Idaho State Board of Dentistry for their applicable practice. Dentists who provide any telehealth services must physically practice within seventy-five (75) miles of the patient's location. ()

02. **Additional Requirements.** In addition to the requirements set forth in Section 54-5705, Idaho Code, during the first contact with the patient, a provider licensed by the Idaho State Board of Dentistry who is providing telehealth services shall: ()

a. Verify the location and identity of the patient; ()

b. Disclose to the patient the provider's identity, their current location and telephone number and Idaho license number; ()

c. Obtain appropriate consents from the patient after disclosures regarding the delivery models and treatment methods or limitations, including a special informed consent regarding the use of telehealth technologies; and ()

03. **Standard of Care.** A provider providing telehealth services to patients located in Idaho must comply with the applicable Idaho community standard of care. The provider shall be personally responsible to familiarize themselves with the applicable Idaho community standard of care. If a patient's presenting symptoms and conditions require a physical examination in order to make a diagnosis, the provider shall not provide diagnosis or treatment through telehealth services unless or until such information is obtained. ()

04. **Informed Consent.** In addition to the requirements of Section 54-5708, Idaho Code, evidence documenting appropriate patient informed consent for the use of telehealth technologies must be obtained and

maintained at regular intervals consistent with the community standard of care. Appropriate informed consent should, at a minimum, include the following terms: ()

- a. Verification. Identification of the patient, the provider and the provider's credentials; ()
- b. Telehealth Determination. Agreement of the patient that the provider will determine whether or not the condition being diagnosed and/or treated is appropriate for telehealth services; ()
- c. Security Measures Information. Information on the security measures taken with the use of telehealth technologies, such as encrypting data, password protected screen savers and data files, or utilizing other reliable authentication techniques, as well as potential risks to privacy and notwithstanding such measures; ()
- d. Potential Information Loss. Disclosure that information may be lost due to technical failures. ()